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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

ADOLPH PATRICK GREENE,

Defendant and Appellant.

A152559

(Solano County  
Super. Ct. No. FCR330438)

Defendant Adolph Patrick Greene appeals from a judgment of conviction, following a jury trial, of possession of a dirk or dagger. (Pen. Code, § 21310.) Before trial, he pleaded no contest to possession of controlled substance paraphernalia, as part of an agreement that the prosecutor would not reference that offense at trial. (Health & Saf. Code, § 11364.) The trial court sentenced defendant to a term of 16 months for the dirk or dagger conviction, with a concurrent term of six months for the paraphernalia possession, and imposed fines and fees. The court also ordered a total of 264 days of deductions from his period of confinement under Penal Code section 4019.

His appellate counsel has raised no issues and asks this court for an independent review of the record to determine whether there are any issues that would, if resolved favorably to defendant, result in reversal or modification of the judgment. (*People v. Kelly* (2006) 40 Cal.4th 106; *People v. Wende* (1979) 25 Cal.3d 436.) Defendant was notified of his right to file a supplemental brief but has not done so. Upon independent review of the record, we conclude no arguable issues are presented for review and affirm the judgment.

This matter arises out of a police stop of defendant, who was riding a bicycle on the sidewalk in violation of a city ordinance. At the time, defendant was on probation, one of the conditions being he was subject to search. The police therefore conducted a search of his person and found a knife with a three-inch blade in one of his pants pockets. Police also found a pipe of the type normally used to smoke methamphetamine. The parties stipulated the search was lawful.

During voir dire, defense counsel made two *Batson/Wheeler*<sup>1</sup> motions based on the prosecutor's peremptory challenges to two African-American jurors, both of which the trial court denied. Review of a trial court's denial of such a motion is deferential. (*People v. Lenix* (2008) 44 Cal.4th 602, 614 [“ ‘So long as the trial court makes a sincere and reasoned effort to evaluate the nondiscriminatory justifications offered, its conclusions are entitled to deference on appeal.’ ”].) The prosecutor offered race-neutral reasons for challenging the jurors, who both reported negative experiences with police or the judicial system, and the court considered these explanations before denying the motions.

In a motion in limine, the prosecution sought to introduce evidence of defendant's prior 2016 conviction of possession of a dirk or dagger to show he “knew he had a knife on his person” and it was not there by mistake. The trial court disagreed with that rationale, but admitted the evidence “for the limited purpose of trying to prove the defendant's knowledge . . . about the May 20th, 2017 object [which] outweighs its prejudicial effect.”

The trial court instructed the jury with CALCRIM 2501 regarding possession of a dirk or dagger. The court denied defendant's request for a “pinpoint” modification of that instruction to add the following: “ ‘To commit the offense, the defendant must still have the requisite guilty mind. That is, the defendant must knowingly and intentionally carry concealed upon his person an instrument that is capable of ready use as a stabbing

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<sup>1</sup> *Batson v. Kentucky* (1986) 476 U.S. 79 (*Batson*); *People v. Wheeler* (1978) 22 Cal.3d 258 (*Wheeler*), abrogated in part by *Johnson v. California* (2005) 545 U.S. 162, 169–173.

weapon. [¶] A defendant who does not know he is carrying a weapon or that the concealed instrument may be used as a stabbing weapon is therefore not guilty.’ ” The court does not err in refusing to give a requested pinpoint instruction if “the point of the requested instruction was readily apparent from the instructions given, and nothing in the particular circumstances of [the] case suggested a need for additional clarification.” (*People v. Bolden* (2002) 29 Cal.4th 515, 559.) The trial court, in denying the request, noted the requested addition was “already contained in Element 4 of 2501. [¶] I really don’t think this adds anything that’s potentially—I’ll just leave it at that. I just don’t think it adds anything. . . . It’s already pinpointed because of Element No. 4.”

As to the conviction by plea of controlled substance paraphernalia, Penal Code section 1237.5 generally precludes an appeal from a judgment of conviction after a plea of no contest or guilty unless the defendant has applied for, and the trial court has granted, a certificate of probable cause. There are two exceptions: (1) a challenge to a search and seizure ruling, as to which an appeal is proper under Penal Code section 1538.5, subdivision (m); and (2) post-plea sentencing issues. (See *People v. Shelton* (2006) 37 Cal.4th 759, 766; see also *People v. Buttram* (2003) 30 Cal.4th 773, 780.) Police searched defendant’s person pursuant to a probation search term, and defendant did not move to suppress. Nor did he apply for a certificate of probable cause. He is therefore not able to challenge the validity of his plea or any other matter that preceded its entry. (*People v. Cole* (2001) 88 Cal.App.4th 850, 868.)

#### **DISPOSITION**

Upon independent review of the record, we conclude no arguable issues are presented for review and affirm the judgment.

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Banke, J.

WE CONCUR:

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Humes, P.J.

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Margulies, J.

A152559, *People v. Greene*